

STATE OF TENNESSEE

PUBLIC CHAPTER NO. 469

SENATE BILL NO. 812

By Overbey, Marrero

Substituted for: House Bill No. 1278

By Stewart, Hardaway

AN ACT to amend Tennessee Code Annotated, Title 47, relative to enacting the Uniform Debt-Management Services Act.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 47, Chapter 18, is amended by adding the following as a new part:

47-18-5401. This part may be cited as the Uniform Debt-Management Services Act.

47-18-5402. In this part:

(1) "Administrator" means the Commissioner of the Department of Commerce and Insurance;

(2) "Affiliate":

(A) With respect to an individual, means:

(i) The spouse of the individual;

(ii) A sibling of the individual or the spouse of a sibling;

(iii) An individual or the spouse of an individual who is a lineal ancestor or lineal descendant of the individual or the individual's spouse;

(iv) An aunt, uncle, great aunt, great uncle, first cousin, niece, nephew, grandniece, or grandnephew, whether related by the whole or the half blood or adoption, or the spouse of any of them; or

(v) Any other individual occupying the residence of the individual; and

(B) With respect to an entity, means:

(i) A person that directly or indirectly controls, is controlled by, or is under common control with the entity;

(ii) An officer of, or an individual performing similar functions with respect to, the entity;

(iii) A director of, or an individual performing similar functions with respect to, the entity;

(iv) Subject to adjustment of the dollar amount pursuant to § 47-18-5432(f), a person that receives or received more than twenty-five thousand dollars (\$25,000) from the entity in either the current year or the preceding year or a person that owns more than ten percent (10%) of, or an individual who is employed by or is a director of, a person that receives or received more than twenty-five thousand dollars (\$25,000) from the entity in either the current year or the preceding year;

(v) An officer or director of, or an individual performing similar functions with respect to, a person described in subdivision (2)(B);

(vi) The spouse of, or an individual occupying the residence of, an individual described in subdivisions (2)(B)(i) - (v); or

(vii) An individual who has the relationship specified in subdivision (A)(iv) to an individual or the spouse of an individual described in subdivisions (2)(B)(i) - (v);

(3) "Agreement" means an agreement between a provider and an individual for the performance of debt-management services;

(4) "Bank" means a financial institution, including a commercial bank, savings bank, savings and loan association, credit union, and trust company, engaged in the business of banking, chartered under federal or state law, and regulated by a federal or state banking regulatory authority;

(5) "Business address" means the physical location of a business, including the name and number of a street;

(6)(A) "Certified counselor" means an individual certified by a training program or certifying organization, approved by the administrator, that authenticates the competence of individuals providing education and assistance to other individuals in connection with debt-management services in which an agreement contemplates that creditors will reduce finance charges or fees for late payment, default, or delinquency;

(B) "Certified debt specialist" means an individual certified by a training program or certifying organization, approved by the administrator, that authenticates the competence of individuals providing education and assistance to other individuals in connection with debt-management services in which an agreement contemplates that creditors will settle debts for less than the full principal amount of debt owed;

(7) "Concessions" means assent to repayment of a debt on terms more favorable to an individual than the terms of the contract between the individual and a creditor;

(8) "Day" means calendar day;

(9) "Debt-management services" means services as an intermediary between an individual and one (1) or more creditors of the individual for the purpose of obtaining concessions, but does not include:

(A) Legal services provided in an attorney-client relationship by an attorney licensed or otherwise authorized to practice law in this state;

(B) Accounting services provided in an accountant-client relationship by a certified public accountant licensed to provide accounting services in this state; or

(C) Financial-planning services provided in a financial planner-client relationship by a member of a financial-planning profession whose members the administrator, by rule, determines are:

(i) Licensed by this state;

(ii) Subject to a disciplinary mechanism;

(iii) Subject to a code of professional responsibility;

and

(iv) Subject to a continuing-education requirement;

(10) "Entity" means a person other than an individual;

(11) "Good faith" means honesty in fact and the observance of reasonable standards of fair dealing;

(12) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or any other legal or commercial entity. The term does not include a public corporation, government, or governmental subdivision, agency, or instrumentality;

(13) "Plan" means a program or strategy in which a provider furnishes debt-management services to an individual and which includes a schedule of payments to be made by or on behalf of the individual and used to pay debts owed by the individual;

(14) "Principal amount of the debt" means the amount of a debt at the time of an agreement;

(15) "Provider" means a person that provides, offers to provide, or agrees to provide debt-management services directly or through others;

(16) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

(17) "Settlement fee" means a charge imposed on or paid by an individual in connection with a creditor's assent to accept in full satisfaction of a debt an amount less than the principal amount of the debt;

(18) "Sign" means, with present intent to authenticate or adopt a record:

(A) To execute or adopt a tangible symbol; or

(B) To attach to or logically associate with the record an electronic sound, symbol, or process;

(19) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States; and

(20) "Trust account" means an account held by a provider that is:

(A) Established in an insured bank;

(B) Separate from other accounts of the provider or its designee;

(C) Designated as a trust account or other account designated to indicate that the money in the account is not the money of the provider or its designee; and

(D) Used to hold money of one or more individuals for disbursement to creditors of the individuals.

47-18-5403.

(a) This part does not apply to an agreement with an individual who the provider has no reason to know resides in this state at the time of the agreement.

(b) This part does not apply to a provider to the extent that the provider:

(1) Provides or agrees to provide debt-management, educational, or counseling services to an individual who the provider has no reason to know resides in this state at the time the provider agrees to provide the services; or

(2) Receives no compensation for debt-management services from or on behalf of the individuals to whom it provides the services or from their creditors.

(c) This part does not apply to the following persons or their employees when the person or the employee is engaged in the regular course of the person's business or profession:

(1) A judicial officer, a person acting under an order of a court or an administrative agency, or an assignee for the benefit of creditors;

(2) A bank;

(3) An affiliate, as defined in § 47-18-5402(2)(B)(i), of a bank if the affiliate is regulated by a federal or state banking regulatory authority;

(4) Any person who is engaged in the credit services business as defined in § 47-18-1002(a) but is not engaged in the business of debt counseling, debt management, or debt settlement as defined by this part provided that such person is registered as a credit services business with the administrator; or

(5) A title insurer, escrow company, or other person that provides bill-paying services if the provision of debt-management services is incidental to the bill-paying services.

47-18-5404.

(a) Except as otherwise provided in subsection (b), a provider may not provide debt-management services to an individual who the provider reasonably should know resides in this state at the time the provider agrees to provide the services, unless the provider is registered under this part.

(b) If a provider is registered under this part, subsection (a) does not apply to an employee or agent of the provider.

(c) The administrator shall maintain and publicize a list of the names of all registered providers.

47-18-5405.

(a) An application for registration as a provider must be in a form prescribed by the administrator.

(b) Subject to adjustment of dollar amounts pursuant to § 47-18-5432(f), an application for registration as a provider must be accompanied by:

(1) The fee established by the administrator;

(2) The bond required by § 47-18-5413;

(3) Identification of all trust accounts required by § 47-18-5422 and an irrevocable consent authorizing the administrator to review and examine the trust accounts;

(4) Evidence of insurance in the amount of two hundred fifty thousand dollars (\$250,000):

(A) Against the risks of dishonesty, fraud, theft, and other misconduct on the part of the applicant or a director, employee, or agent of the applicant;

(B) Issued by an insurance company authorized to do business in this state and rated at least A or equivalent by a nationally recognized rating organization approved by the administrator;

(C) With a deductible not exceeding five thousand dollars (\$5,000);

(D) Payable for the benefit of the applicant, this state, and individuals who are residents of this state, as their interests may appear; and

(E) Not subject to cancellation by the applicant or the insurer until sixty (60) days after written notice has been given to the administrator;

(5) A record consenting to the jurisdiction of this state containing:

(A) The name, business address, and other contact information of its registered agent in this state for purposes of service of process; or

(B) The appointment of the administrator as agent of the provider for purposes of service of process; and

(6) If the applicant is exempt from taxation under the Internal Revenue Code, 26 U.S.C. § 501, evidence of that status.

47-18-5406. An application for registration must be signed under oath and include:

(1) The applicant's name, principal business address and telephone number, and all other business addresses in this state, electronic-mail addresses, and Internet Web site addresses;

(2) All names under which the applicant conducts business;

(3) The address of each location in this state at which the applicant will provide debt-management services or a statement that the applicant will have no such location;

(4) The name and home address of each officer and director of the applicant and each person that owns at least ten percent (10%) of the applicant;

(5) Identification of every jurisdiction in which, during the five (5) years immediately preceding the application:

(A) The applicant or any of its officers or directors has been licensed or registered to provide debt-management services;
or

(B) Individuals have resided when they received debt-management services from the applicant;

(6) A statement describing, to the extent it is known or should be known by the applicant, any material civil or criminal judgment or litigation and any material administrative or enforcement action by a governmental agency in any jurisdiction against the applicant, any of its officers, directors, owners, or agents, or any person who is authorized to have access to the trust account required by § 47-18-5422;

(7) The applicant's financial statements, reviewed by a licensed accountant, for each of the two (2) years immediately preceding the application or, if it has not been in operation for the two (2) years preceding the application, for the period of its existence. If the applicant claims nonprofit or tax exempt status, or if the applicant's business practices involve holding, accessing, or directing the funds of an individual, the financial statements required by this part shall be audited by a licensed accountant;

(8) Evidence of accreditation by an independent accrediting organization approved by the administrator;

(9) Evidence that, within twelve (12) months after initial employment, each of the applicant's counselors becomes certified as a certified counselor or certified debt specialist;

(10) A description of the three (3) most commonly used educational programs that the applicant provides or intends to provide to individuals who reside in this state and a copy of any materials used or to be used in those programs;

(11) A description of the applicant's financial analysis and initial budget plan, including any form or electronic model, used to evaluate the financial condition of individuals;

(12) A copy of each form of agreement that the applicant will use with individuals who reside in this state;

(13) The schedule of fees and charges that the applicant will use with individuals who reside in this state;

(14) At the applicant's expense, the results of a criminal-records check, including fingerprints, conducted within the immediately preceding twelve (12) months, covering every officer of the applicant and every employee or agent of the applicant who is authorized to have access to the trust account required by § 47-18-5422;

(15) The names and addresses of all employers of each director during the ten (10) years immediately preceding the application;

(16) A description of any ownership interest of at least ten percent (10%) by a director, owner, or employee of the applicant in:

(A) Any affiliate of the applicant; or

(B) Any entity that provides products or services to the applicant or any individual relating to the applicant's debt-management services;

(17) If an applicant claims nonprofit or tax exempt status, or if an applicant's business practices involve holding, accessing, or directing the funds of an individual, a statement of the amount of compensation of the applicant's five (5) most highly compensated employees for each of the three (3) years immediately preceding the application or, if the applicant has not been in operation for the three (3) years preceding the application, for the period of the applicant's existence;

(18) The identity of each director who is an affiliate, as defined in § 47-18-5402(2)(A) or (2)(B)(i), (ii), (iv), (v), (vi) or (vii), of the applicant; and

(19) Any other information that the administrator reasonably requires to perform the administrator's duties under § 47-18-5409.

47-18-5407. An applicant or registered provider shall notify the administrator within ten (10) days after a change in the information specified in § 47-18-5405(b)(4) or (b)(6) or § 47-18-5406(1), (3), (6), (12) or (13).

47-18-5408. Except for the information required by § 47-18-5406(7), (14), and (17), and the addresses required by § 47-18-5406(4), the administrator shall make the information in an application for registration as a provider available to the public.

47-18-5409.

(a) Except as otherwise provided in subsections (c) and (d), the administrator shall issue a certificate of registration as a provider to a person that complies with §§ 47-18-5405 and 47-18-5406.

(b) If an applicant has otherwise complied with §§ 47-18-5405 and 47-18-5406, including a timely effort to obtain the information required by § 47-18-5406(14), but the information has not been received, the administrator may issue a temporary certificate of registration. The temporary certificate shall expire no later than one hundred eighty (180) days after issuance.

(c) The administrator may deny registration if:

(1) The application contains information that is materially erroneous or incomplete;

(2) An officer, director, or owner of the applicant has been convicted of a crime, or suffered a civil judgment, involving dishonesty or the violation of state or federal securities laws;

(3) The applicant or any of its officers, directors, or owners has defaulted in the payment of money collected for others;

(4) The application is not accompanied by the fee established by the administrator; or

(5) The administrator finds that the financial responsibility, experience, character, or general fitness of the applicant or its owners, directors, employees, or agents does not warrant belief that the business will be operated in compliance with this part.

(d) The administrator shall deny registration if, with respect to an applicant that is organized as a not-for-profit entity or has obtained tax-exempt status under the Internal Revenue Code, 26 U.S.C. § 501, the applicant's board of directors is not independent of the applicant's employees and agents.

(e) Subject to adjustment of the dollar amount pursuant to § 47-18-5432(f), a board of directors is not independent for purposes of subsection (d) if more than one-fourth (1/4) of its members:

(1) Are affiliates of the applicant, as defined in Section 47-18-5402(2)(A) or (2)(B)(i), (ii), (iv), (v), (vi), or (vii); or

(2) After the date ten (10) years before first becoming a director of the applicant, were employed by or directors of a person that received from the applicant more than twenty-five thousand dollars (\$25,000) in either the current year or the preceding year.

47-18-5410.

(a) The administrator shall approve or deny an initial registration as a provider within one hundred twenty (120) days after an application is filed. In connection with a request pursuant to § 47-18-5406(19) for additional information, the administrator may extend the one hundred twenty-day period for not more than sixty (60) days. Within seven (7) days after denying an application, the administrator, in a record, shall inform the applicant of the reasons for the denial.

(b) If the administrator denies an application for registration as a provider or does not act on an application within the time prescribed in subsection (a), the applicant may appeal and request a hearing pursuant to Title 4, Chapter 5, Part 3.

(c) Subject to §§ 47-18-5411(d) and 47-18-5434, a registration as a provider is valid for one (1) year.

47-18-5411.

(a) A provider must obtain a renewal of its registration annually.

(b) An application for renewal of registration as a provider must be in a form prescribed by the administrator, signed under oath; and:

(1) Be filed no fewer than thirty (30) and no more than sixty (60) days before the registration expires;

(2) Be accompanied by the fee established by the administrator and the bond required by § 47-18-5413;

(3) Contain the matter required for initial registration as a provider by § 47-18-5406(8) and (9) and a financial statement, audited by an accountant licensed to conduct audits, for the applicant's fiscal year immediately preceding the application;

(4) Disclose any changes in the information contained in the applicant's application for registration or its immediately previous application for renewal, as applicable. If an application is otherwise complete and the applicant has made a timely effort to obtain the information required by § 47-18-5406(14), but the

information has not been received, the administrator may issue a temporary renewal of registration. The temporary renewal shall expire no later than one hundred eighty (180) days after issuance;

(5) Supply evidence of insurance in an amount equal to the larger of two hundred fifty thousand dollars (\$250,000) or the highest daily balance in the trust account required by § 47-18-5422 during the six-month period immediately preceding the application:

(A) Against risks of dishonesty, fraud, theft, and other misconduct on the part of the applicant or a director, employee, or agent of the applicant;

(B) Issued by an insurance company authorized to do business in this state and rated at least A or equivalent by a nationally recognized rating organization approved by the administrator;

(C) With a deductible not exceeding five thousand dollars (\$5,000);

(D) Payable for the benefit of the applicant, this state, and individuals who are residents of this state, as their interests may appear; and

(E) Not subject to cancellation by the applicant or the insurer until sixty (60) days after written notice has been given to the administrator;

(6) Disclose the total amount of money received by the applicant pursuant to plans during the preceding twelve (12) months from or on behalf of individuals who reside in this state and the total amount of money distributed to creditors of those individuals during that period;

(7) Disclose, to the best of the applicant's knowledge, the gross amount of money accumulated during the preceding twelve (12) months pursuant to plans by or on behalf of individuals who reside in this state and with whom the applicant has agreements; and

(8) Provide any other information that the administrator reasonably requires to perform the administrator's duties under this section.

(c) Except for the information required by § 47-18-5406(7), (14) and (17) and the addresses required by § 47-18-5406(4), the administrator shall make the information in an application for renewal of registration as a provider available to the public.

(d) If a registered provider files a timely and complete application for renewal of registration, the registration remains effective until the administrator, in a record, notifies the applicant of a denial and states the reasons for the denial.

(e) If the administrator denies an application for renewal of registration as a provider, the applicant, within thirty (30) days after receiving notice of the denial, may appeal and request a hearing pursuant to Title 4, Chapter 5, Part 3. Subject to § 47-18-5434, while the appeal is pending the applicant shall continue to provide debt-management services to individuals with whom it has agreements. If the denial is affirmed, subject to the administrator's order and § 47-18-5434, the applicant shall continue to provide debt-management services to individuals with whom it has agreements until, with the approval of the administrator, it transfers the agreements to another registered provider or returns to the individuals all unexpended money that is under the applicant's control.

47-18-5412. If a provider holds a license or certificate of registration in another state authorizing it to provide debt-management services, the provider may submit a copy of that license or certificate and the application for it instead of an application in the form prescribed by § 47-18-5405(a), § 47-18-5406, or § 47-18-5411(b). The administrator shall accept the application and the license or certificate from the other state as an application for registration as a provider or for renewal of registration as a provider, as appropriate, in this state if:

(1) The application in the other state contains information substantially similar to or more comprehensive than that required in an application submitted in this state;

(2) The applicant provides the information required by § 47-18-5406(1), (3), (10), (12), and (13); and

(3) The applicant, under oath, certifies that the information contained in the application is current or, to the extent it is not current, supplements the application to make the information current.

47-18-5413.

(a) Except as otherwise provided in § 47-18-5414, a provider that is required to be registered under this part shall file a surety bond with the administrator, which must:

(1) Be in effect during the period of registration and for two
(2) years after the provider ceases providing debt-management services to individuals in this state; and

(2) Run to this state for the benefit of this state and of individuals who reside in this state when they agree to receive debt-management services from the provider, as their interests may appear.

(b) Subject to adjustment of the dollar amount pursuant to § 47-18-5432(f), a surety bond filed pursuant to subsection (a) must:

(1) Be in the amount of fifty thousand dollars (\$50,000) or other larger or smaller amount that the administrator determines is warranted by the financial condition and business experience of the provider, the history of the provider in performing debt-management services, the risk to individuals, and any other factor the administrator considers appropriate;

(2) Be issued by a bonding, surety, or insurance company authorized to do business in this state and rated at least "A" by a nationally recognized rating organization; and

(3) Have payment conditioned upon noncompliance of the provider or its agent with this part.

(c) If the principal amount of a surety bond is reduced by payment of a claim or a judgment, the provider shall immediately notify the administrator and, within thirty (30) days after notice by the administrator, file a new or additional surety bond in an amount set by the administrator. The amount of the new or additional bond must be at least the amount of the bond immediately before payment of the claim or judgment. If for any reason a surety terminates a bond, the provider shall immediately file a new surety bond in the amount of fifty thousand dollars (\$50,000) or other amount determined pursuant to subsection (b).

(d) The administrator or an individual may obtain satisfaction out of the surety bond procured pursuant to this section if:

(1) The administrator assesses expenses under § 47-18-5432(b)(1), issues a final order under § 47-18-5433(a)(2), or recovers a final judgment under § 47-18-5433(a)(4), (a)(5), or (d); or

(2) An individual recovers a final judgment pursuant to § 47-18-5435(a), (b), (c)(1), (c)(2), or (c)(4).

(e) If claims against a surety bond exceed or are reasonably expected to exceed the amount of the bond, the administrator, on the initiative of the administrator or on petition of the surety, shall, unless the proceeds are adequate to pay all costs, judgments, and claims, distribute the proceeds in the following order:

(1) To satisfaction of a final order or judgment under § 47-18-5433(a)(2), (a)(4), (a)(5) or (d);

(2) To final judgments recovered by individuals pursuant to § 47-18-5435(a), (b), (c)(1), (c)(2) or (c)(4), pro rata;

(3) To claims of individuals established to the satisfaction of the administrator, pro rata; and

(4) If a final order or judgment is issued under § 47-18-5433(a), to the expenses charged pursuant to § 47-18-5432(b)(1).

47-18-5414.

(a) Instead of the surety bond required by § 47-18-5413, a provider may deliver to the administrator, in the amount required by § 47-18-5413(b), and, except as otherwise provided in subdivision (a)(2)(A), payable or available to this state and to individuals who reside in this state when they agree to receive debt-management services from the provider, as their interests may appear, if the provider or its agent does not comply with this part:

(1) A certificate of insurance:

(A) Issued by an insurance company authorized to do business in this state and rated at least A or equivalent by a nationally recognized rating organization approved by the administrator; and

(B) With no deductible, or if the provider supplies a bond in the amount of five thousand dollars (\$5,000), a deductible not exceeding five thousand dollars (\$5,000); or

(2) With the approval of the administrator:

(A) An irrevocable letter of credit, issued or confirmed by a bank approved by the administrator, payable upon presentation of a certificate by the administrator stating that the provider or its agent has not complied with this part; or

(B) Bonds or other obligations of the United States or guaranteed by the United States or bonds or other obligations of this state or a political subdivision of this state, to be deposited and maintained with a bank approved by the administrator for this purpose.

(b) If a provider furnishes a substitute pursuant to subsection (a), then § 47-18-5413(a), (c), (d) and (e) apply to the substitute.

47-18-5415. A provider shall act in good faith in all matters under this part.

47-18-5416. A provider that is required to be registered under this part shall maintain a toll-free communication system, staffed at a level that reasonably permits an individual to speak to a certified counselor, certified debt specialist, or customer-service representative, as appropriate, during ordinary business hours.

47-18-5417.

(a) Before providing debt-management services, a registered provider shall give the individual an itemized list of goods and services and the charges for each. The list must be clear and conspicuous, be in a record the individual may keep whether or not the individual assents to an agreement, and describe the goods and services the provider offers:

(1) Free of additional charge if the individual enters into an agreement;

(2) For a charge if the individual does not enter into an agreement; and

(3) For a charge if the individual enters into an agreement, using the following terminology, as applicable, and format:

Set-up fee

<hr/>	
	Dollar amount of fee
Monthly	service fee

determining amount Dollar amount of fee or method of

Settlement fee

determining amount Dollar amount of fee or method of

with a plan: Goods and services in addition to those provided in connection

<hr/>	
(item)	Dollar amount or method of determining

amount

<hr/>	
(item)	Dollar amount or method of determining

amount

(b) A provider may not furnish debt-management services unless the provider, through the services of a certified counselor or certified debt specialist:

(1) Provides the individual with reasonable education about the management of personal finance;

(2) Has prepared a financial analysis; and

(3) If the individual is to make regular, periodic payments to a creditor or provider:

(A) Has prepared a plan for the individual;

(B) Has made a determination, based on the provider's analysis of the information provided by the individual and otherwise available to it, that the plan is suitable for the individual and the individual will be able to meet the payment obligations under the plan; and

(C) Believes that each creditor of the individual listed as a participating creditor in the plan will accept payment of the individual's debts as provided in the plan.

(c) Before an individual assents to an agreement to engage in a plan, a provider shall:

(1) Provide the individual with a copy of the analysis and plan required by subsection (b) in a record that identifies the provider and that the individual may keep whether or not the individual assents to the agreement;

(2) Inform the individual of the availability, at the individual's option, of assistance by a toll-free communication system or in person to discuss the financial analysis and plan required by subsection (b); and

(3) If a plan contemplates that creditors will reduce finance charges or fees for late payment, default, or delinquency, or if the provider's business practices involve holding, accessing, or directing the funds of an individual, with respect to all creditors identified by the individual or otherwise known by the provider to be creditors of the individual, provide the individual with a list of:

(A) Creditors that the provider expects to participate in the plan and grant concessions;

(B) Creditors that the provider expects to participate in the plan but not grant concessions;

(C) Creditors that the provider expects not to participate in the plan; and

(D) All other creditors.

(d) Before an individual assents to an agreement, the provider shall inform the individual, in a separate record and that the individual may keep whether or not the individual assents to the agreement:

(1) Of the name and business address of the provider;

(2) That plans are not suitable for all individuals and the individual may ask the provider about other ways, including bankruptcy, to deal with indebtedness;

(3) That establishment of a plan may adversely affect the individual's credit rating or credit scores;

(4) That nonpayment of debt may lead creditors to increase finance and other charges or undertake collection activity, including litigation;

(5) Unless it is not true, that the provider may receive compensation from the creditors of the individual; and

(6) That, unless the individual is insolvent, if a creditor settles for less than the full amount of the debt, the plan may result in the creation of taxable income to the individual, even though the individual does not receive any money.

(e) If a provider may receive payments from an individual's creditors and the plan contemplates that the individual's creditors will reduce finance charges or fees for late payment, default, or delinquency, the provider may comply with subsection (d) by providing the following disclosure, surrounded by black lines:

IMPORTANT INFORMATION FOR YOU TO CONSIDER

(1) Debt-management plans are not right for all individuals, and you may ask us to provide information about other ways, including bankruptcy, to deal with your debts.

(2) Using a debt-management plan may make it harder for you to obtain credit.

(3) We may receive compensation for our services from your creditors.

Name and business address of provider

(f) If a provider will not receive payments from an individual's creditors and the plan contemplates that the individual's creditors will reduce finance charges or fees for late payment, default, or delinquency, a provider may comply with subsection (d) by providing the following disclosure, surrounded by black lines:

IMPORTANT INFORMATION FOR YOU TO CONSIDER

(1) Debt-management plans are not right for all individuals, and you may ask us to provide information about other ways, including bankruptcy, to deal with your debts.

(2) Using a debt-management plan may make it harder for you to obtain credit.

Name and business address of provider

(g) If an agreement contemplates that creditors will settle debts for less than the full principal amount of debt owed, a provider may comply with subsection (d) by providing the following disclosure, surrounded by black lines:

IMPORTANT INFORMATION FOR YOU TO CONSIDER

(1) Our program is not right for all individuals, and you may ask us to provide information about bankruptcy and other ways to deal with your debts.

(2) Nonpayment of your debts under our program may:

(A) Hurt your credit rating or credit scores;

(B) Lead your creditors to increase finance and other charges; and

(C) Lead your creditors to undertake activity, including lawsuits, to collect the debts.

(3) Reduction of debt under our program may result in taxable income to you, even though you will not actually receive any money.

Name and business address of provider

47-18-5418.

(a) In this section:

(1) "Consumer" means an individual who seeks or obtains goods or services that are used primarily for personal, family, or household purposes.

(2) "Federal act" means the electronic signatures in Global and National Commerce Act, 15 U.S.C. § 7001, et seq.

(b) A provider may satisfy the requirements of § 47-18-5417, § 47-18-5419, or § 47-18-5427 by means of the Internet or other electronic means if the provider obtains a consumer's consent in the manner provided by § 101(c)(1) of the federal act.

(c) The disclosures and materials required by §§ 47-18-5417, 47-18-5419 and 47-18-5420 shall be presented in a form that is capable of being accurately reproduced for later reference.

(d) With respect to disclosure by means of an Internet Web site, the disclosure of the information required by § 47-18-5417(d) must appear on one (1) or more screens that:

(1) Contain no other information; and

(2) The individual must see before proceeding to assent to formation of an agreement.

(e) At the time of providing the materials and agreement required by §§ 47-18-5417(c) and (d), 47-18-5419 and 47-18-5427, a provider shall inform the individual that upon electronic, telephonic, or written request, it will send the individual a written copy of the materials, and shall comply with a request as provided in subsection (f).

(f) If a provider is requested, before the expiration of ninety (90) days after an agreement is completed or terminated, to send a written copy of the materials required by § 47-18-5417(c) and (d), § 47-18-5419, or § 47-18-5427, the provider shall send them at no charge within three (3) business days after the request is received, but the provider need not comply with a request more than once per calendar month or if it reasonably believes the request is made for purposes of harassment. If a request is made more than ninety (90) days after an agreement is completed or terminated, the provider shall send within a reasonable time a written copy of the materials requested.

(g) A provider that maintains an Internet Web site shall disclose on the home page of its Web site or on a page that is clearly and conspicuously connected to the home page by a link that clearly reveals its contents:

(1) Its name and all names under which it does business;

(2) Its principal business address, telephone number, and electronic-mail address, if any; and

(3) The names of its principal officers.

(h) Subject to subsection (i), if a consumer who has consented to electronic communication in the manner provided by § 101 of the federal act withdraws consent as provided in the federal act, a provider may terminate its agreement with the consumer.

(i) If a provider wishes to terminate an agreement with a consumer pursuant to subsection (h), it shall notify the consumer that it will terminate the agreement unless the consumer, within thirty (30) days after receiving the notification, consents to electronic communication in the manner provided in § 101(c) of the federal act. If the consumer consents, the provider may terminate the agreement only as permitted by Section 47-18-5419(a)(6)(G).

47-18-5419.

(a) An agreement must:

(1) Be in a record;

(2) Be dated and signed by the provider and the individual;

(3) Include the name of the individual and the address where the individual resides;

(4) Include the name, business address, and telephone number of the provider;

(5) Be delivered to the individual immediately upon formation of the agreement; and

(6) Disclose:

(A) The services to be provided;

(B) The amount, or method of determining the amount, of all fees, individually itemized, to be paid by the individual;

(C) The schedule of payments to be made by or on behalf of the individual, including the amount of each payment, the date on which each payment is due, and an estimate of the date of the final payment;

(D) If a plan provides for regular periodic payments to creditors:

(i) Each creditor of the individual to which payment will be made, the amount owed to each creditor, and any concessions the provider reasonably believes each creditor will offer; and

(ii) The schedule of expected payments to each creditor, including the amount of each payment and the date on which it will be made;

(E) Each creditor that the provider believes will not participate in the plan and to which the provider will not direct payment;

(F) How the provider will comply with its obligations under § 47-18-5427(a);

(G) That the provider may terminate the agreement for good cause, upon return of unexpended money of the individual;

(H) That the individual may cancel the agreement as provided in § 47-18-5420;

(I) That the individual may contact the administrator with any questions or complaints regarding the provider; and

(J) The address, telephone number, and Internet address or Web site of the administrator.

(b) For purposes of subdivision (a)(5), delivery of an electronic record occurs when it is made available in a format in which the individual may retrieve, save, and print it and the individual is notified that it is available.

(c) If the administrator supplies the provider with any information required under subsection (a)(6)(J), the provider may comply with that requirement only by disclosing the information supplied by the administrator.

(d) An agreement must provide that:

(1) The individual has a right to terminate the agreement at any time, without penalty or obligation, by giving the provider written or electronic notice, in which event:

(A) The provider will refund all unexpended money that the provider or its agent has received from or on behalf of the individual for the reduction or satisfaction of the individual's debt;

(B) With respect to an agreement that contemplates that creditors will settle debts for less than the principal amount of debt, the provider will refund sixty-five percent (65%) of any portion of the set-up fee that has not been credited against the settlement fee; and

(C) All powers of attorney granted by the individual to the provider are revoked and ineffective;

(2) The individual authorizes any bank in which the provider or its agent has established a trust account to disclose to the administrator any financial records relating to the trust account; and

(3) The provider will notify the individual within five (5) days after learning of a creditor's final decision to reject or withdraw from a plan and that this notice will include:

(A) The identity of the creditor; and

(B) The right of the individual to modify or terminate the agreement.

(e) An agreement may confer on a provider a power of attorney to settle the individual's debt for no more than fifty percent (50%) of the outstanding amount of the debt. An agreement may not confer a power of attorney to settle a debt for more than fifty percent (50%) of that amount, but may confer a power of attorney to negotiate with creditors of the individual on behalf of the individual. An agreement must provide that the provider will obtain the assent of the individual after a creditor has assented to a settlement for more than fifty percent (50%) of the outstanding amount of the debt.

(f) An agreement may not:

(1) Provide for application of the law of any jurisdiction other than the United States and this state;

(2) Except as permitted by Title 29, Chapter 5, Part 3, or by § 2 of the Federal Arbitration Act, 9 U.S.C. § 2, as amended, contain a provision that modifies or limits otherwise available forums or procedural rights, including the right to trial by jury, that are generally available to the individual under law other than this part;

(3) Contain a provision that restricts the individual's remedies under this part or law other than this part; or

(4) Contain a provision that:

(A) Limits or releases the liability of any person for not performing the agreement or for violating this part; or

(B) Indemnifies any person for liability arising under the agreement or this part.

(g) All rights and obligations specified in subsection (d) and Section 47-18-5420 exist even if not provided in the agreement. A provision in an agreement which violates subsection (d), (e) or (f) is void.

47-18-5420.

(a) An individual may cancel an agreement before midnight of the third business day after the individual assents to it, unless the agreement does not comply with subsection (b) or § 47-18-5419 or § 47-18-5428, in which event the individual may cancel the agreement within thirty (30) days after the individual assents to it. To exercise the right to cancel, the individual must give notice in a record to the provider. Notice by mail is given when mailed.

(b) An agreement must be accompanied by a form that contains in boldface type, surrounded by bold black lines:

****Notice of Right to Cancel**

You may cancel this agreement, without any penalty or obligation, at any time before midnight of the third business day that begins the day after you agree to it by electronic communication or by signing it.

To cancel this agreement during this period, send an e-mail to

_____ or mail or deliver a signed, dated copy of this notice,
or any other
E-mail address of provider

written notice to _____ at
Name of provider

_____ before midnight on
_____. If you
Address of provider *Date*

cancel this agreement within the 3-day period, we will refund all money you already have paid us.

You also may terminate this agreement at any later time, but we may not be required to refund fees you have paid us.

I cancel this agreement,

Print your name

Signature

Date

(c) If a personal financial emergency necessitates the disbursement of an individual's money to one (1) or more of the individual's creditors before the expiration of three (3) days after an agreement is signed, an individual may waive the right to cancel. To waive the right, the individual must send or deliver a signed, dated statement in the individual's own words describing the circumstances that

necessitate a waiver. The waiver must explicitly waive the right to cancel. A waiver by means of a standard-form record is void.

47-18-5421. Unless the administrator, by rule, provides otherwise, the disclosures and documents required by this part must be in English. If a provider communicates with an individual primarily in a language other than English, the provider must furnish a translation into the other language of the disclosures and documents required by this part.

47-18-5422.

(a) All money paid to a provider by or on behalf of an individual for distribution to creditors pursuant to a plan is held in trust. Within two (2) business days after receipt, the provider shall deposit the money in a trust account established for the benefit of individuals to whom the provider is furnishing debt-management services.

(b) Money held in trust by a provider is not property of the provider or its designee. The money is not available to creditors of the provider or designee, except an individual from whom or on whose behalf the provider received money, to the extent that the money has not been disbursed to creditors of the individual.

(c) A provider shall:

(1) Maintain separate records of account for each individual to whom the provider is furnishing debt-management services;

(2) Disburse money paid by or on behalf of the individual to creditors of the individual as disclosed in the agreement, except that:

(A) The provider may delay payment to the extent that a payment by the individual is not final; and

(B) If a plan provides for regular periodic payments to creditors, the disbursement must comply with the due dates established by each creditor; and

(3) Promptly correct any payments that are not made or that are misdirected as a result of an error by the provider or other person in control of the trust account and reimburse the individual for any costs or fees imposed by a creditor as a result of the failure to pay or misdirection.

(d) A provider may not commingle money in a trust account established for the benefit of individuals to whom the provider is furnishing debt-management services with money of other persons.

(e) A trust account must at all times have a cash balance equal to the sum of the balances of each individual's account.

(f) If a provider has established a trust account pursuant to subsection (a), the provider shall reconcile the trust account at least once a month. The reconciliation must compare the cash balance in the trust account with the sum of the balances in each individual's account. If the provider or its designee has more than one (1) trust account, each trust account must be individually reconciled.

(g) If a provider discovers, or has a reasonable suspicion of, embezzlement or other unlawful appropriation of money held in trust, the provider immediately shall notify the administrator by a method approved by the administrator. Unless the administrator by rule provides otherwise, within five (5) days thereafter, the provider shall give notice to the administrator describing the remedial action taken or to be taken.

(h) If an individual terminates an agreement or it becomes reasonably apparent to a provider that a plan has failed, the provider shall promptly refund to the individual all money paid by or on behalf of the individual which has not been paid to creditors, less fees that are payable to the provider under § 47-18-5423.

(i) Before relocating a trust account from one bank to another, a provider shall inform the administrator of the name, business address, and telephone number of the new bank. As soon as practicable, the provider shall inform the administrator of the account number of the trust account at the new bank.

47-18-5423.

(a) A provider may not impose directly or indirectly a fee or other charge on an individual or receive money from or on behalf of an individual for debt-management services except as permitted by this section.

(b) A provider may not impose charges or receive payment for debt-management services until the provider and the individual have signed an agreement that complies with §§ 47-18-5419 and 47-18-5428.

(c) If an individual assents to an agreement, a provider may not impose a fee or other charge for educational or counseling services, or the like, except as otherwise provided in this subsection (c) and § 47-18-5428(d). The administrator may authorize a provider to charge a fee based on the nature and extent of the educational or counseling services furnished by the provider.

(d) Subject to adjustment of dollar amounts pursuant to § 47-18-5432(f), the following rules apply:

(1) If an individual assents to a plan that contemplates that creditors will reduce finance charges or fees for late payment, default, or delinquency, the provider may charge:

(A) A fee not exceeding fifty dollars (\$50.00) for consultation, obtaining a credit report, setting up an account, and the like; and

(B) A monthly service fee, not to exceed ten dollars (\$10.00) times the number of creditors remaining in a plan at the time the fee is assessed, but not more than fifty dollars (\$50.00) in any month;

(2) If an individual assents to an agreement that contemplates that creditors will settle debts for less than the principal amount of the debt, a provider may charge:

(A) Subject to § 47-18-5419(d), a fee for consultation, obtaining a credit report, setting up an account, and the like, in an amount not exceeding the lesser of four hundred dollars (\$400) or four percent (4%) of the debt in the plan at the inception of the plan; and

(B) A monthly service fee, not to exceed ten dollars (\$10.00) times the number of creditors remaining in a plan at the time the fee is assessed, but not more than fifty dollars (\$50.00) in any month.

(3) A provider may not impose or receive fees under both subdivisions (d)(1) and (2).

(4) Except as otherwise provided in § 47-18-5428(d), if an individual does not assent to an agreement, a provider may receive for educational and counseling services it provides to the individual a fee not exceeding one hundred dollars (\$100) or, with the approval of the administrator, a larger fee. The administrator may approve a fee larger than one hundred dollars (\$100) if the nature and extent of the educational and counseling services warrant the larger fee.

(e) If, before the expiration of ninety (90) days after the completion or termination of educational or counseling services, an individual assents to an agreement, the provider shall refund to the individual any fee paid pursuant to subdivision (d)(4).

(f) Except as otherwise provided in subsections (c) and (d), if an agreement contemplates that creditors will settle an individual's debts for less than the principal amount of the debt, compensation for services in connection with settling a debt may not exceed the applicable settlement fee limits in subdivisions (1) and (2) the terms of which shall be clearly disclosed in the agreement.

(1) With respect to an agreement that provides for a flat settlement fee based on the overall amount of included debt, the total aggregate amount of fees charged to any individual under this chapter, including fees charged under subdivisions (d)(2)(A) and (B), may not exceed seventeen percent (17%) of the principal amount of debt included in the agreement at the inception of the agreement. The flat settlement fee authorized under this subdivision (1) shall be assessed in equal monthly payments over at least half the length of the plan, as estimated at the plan's inception, unless the payment of fees is voluntarily accelerated by the individual in a separate record and at least half of the overall amount of outstanding debt covered by the agreement has been settled.

(2) With respect to agreements in which fees are calculated as a percentage of the amount saved by an individual, a settlement fee may not exceed thirty percent (30%) of the excess of the outstanding amount of each debt over the amount actually paid to the creditor, as calculated at the time of settlement. Settlement fees authorized under this subdivision (2) shall become billable only as debts are settled, and the total aggregate amount of fees charged to any individual under this part, including fees charged under subdivisions (d)(2)(A) and (B), may not exceed twenty percent (20%) of the principal amount of debt included in the agreement at the agreement's inception.

(3) A provider may not impose or receive fees under both subdivisions (1) and (2).

(g) Subject to adjustment of the dollar amount pursuant to § 47-18-5432(f), if a payment to a provider by an individual under this act is dishonored, a provider may impose a reasonable charge on the individual, not to exceed the lesser of twenty-five dollars (\$25.00) and the amount permitted by law other than this part.

47-18-5424. A provider may not solicit a voluntary contribution from an individual or an affiliate of the individual for any service provided to the individual. A provider may accept voluntary contributions from an individual but, until thirty (30) days after completion or termination of a plan, the aggregate amount of money received from or on behalf of the individual may not exceed the total amount the provider may charge the individual under § 47-18-5423.

47-18-5425.

(a) If a provider imposes a fee or other charge or receives money or other payments not authorized by § 47-18-5423 or § 47-18-5424, the individual may void the agreement and recover as provided in § 47-18-5435.

(b) If a provider is not registered as required by this part when an individual assents to an agreement, the agreement is voidable by the individual.

(c) If an individual voids an agreement under subsection (b), the provider does not have a claim against the individual for breach of contract or for restitution.

47-18-5426.

(a) If an individual who has entered into an agreement fails for sixty (60) days to make payments required by the agreement, a provider may terminate the agreement.

(b) If a provider or an individual terminates an agreement, the provider shall immediately return to the individual:

(1) Any money of the individual held in trust for the benefit of the individual; and

(2) Sixty-five percent (65%) of any portion of the set-up fee received pursuant to § 47-18-5423(d)(2) which has not been credited against settlement fees.

47-18-5427.

(a) A provider shall provide the accounting required by subsection (b):

(1) Upon cancellation or termination of an agreement; and

(2) Before cancellation or termination of any agreement:

(A) At least once each month; and

(B) Within five (5) business days after a request by an individual, but the provider need not comply with more than one (1) request in any calendar month.

(b) A provider, in a record, shall provide each individual for whom it has established a plan an accounting of the following information:

(1) The amount of money received from the individual since the last report;

(2) The amounts and dates of disbursement made on the individual's behalf, or by the individual upon the direction of the provider, since the last report to each creditor listed in the plan;

(3) The amounts deducted from the amount received from the individual;

(4) The amount held in reserve; and

(5) If, since the last report, a creditor has agreed to accept as payment in full an amount less than the principal amount of the debt owed by the individual:

(A) The total amount and terms of the settlement;

(B) The amount of the debt when the individual assented to the plan;

(C) The amount of the debt when the creditor agreed to the settlement; and

(D) The calculation of a settlement fee.

(c) A provider shall maintain records for each individual for whom it provides debt-management services for five (5) years after the final payment made by the individual and produce a copy of them to the individual within a reasonable time after a request for them. The provider may use electronic or other means of storage of the records.

47-18-5428.

(a) A provider may not, directly or indirectly:

(1) Misappropriate or misapply money held in trust;

(2) Settle a debt on behalf of an individual for more than fifty percent (50%) of the outstanding amount of the debt owed a creditor, unless the individual assents to the settlement after the creditor has assented;

(3) Take a power of attorney that authorizes it to settle a debt, unless the power of attorney expressly limits the provider's authority to settle debts for not more than fifty percent (50%) of the outstanding amount of the debt owed a creditor;

(4) Exercise or attempt to exercise a power of attorney after an individual has terminated an agreement;

(5) Initiate a transfer from an individual's account at a bank or with another person unless the transfer is:

(A) A return of money to the individual; or

(B) Before termination of an agreement, properly authorized by the agreement and this part, and for:

(i) Payment to one (1) or more creditors pursuant to an agreement; or

(ii) Payment of a fee;

(6) Offer a gift or bonus, premium, reward, or other compensation to an individual for executing an agreement;

(7) Offer, pay, or give a gift or bonus, premium, reward, or other compensation to a person for referring a prospective customer, if the person making the referral has a financial interest in the outcome of debt-management services provided to the customer, unless neither the provider nor the person making the referral communicates to the prospective customer the identity of the source of the referral;

(8) Receive a bonus, commission, or other benefit for referring an individual to a person;

(9) Structure a plan in a manner that would result in a negative amortization of any of an individual's debts, unless a creditor that is owed a negatively amortizing debt agrees to refund or waive the finance charge upon payment of the principal amount of the debt;

(10) Compensate its employees on the basis of a formula that incorporates the number of individuals the employee induces to enter into agreements;

(11) Settle a debt or lead an individual to believe that a payment to a creditor is in settlement of a debt to the creditor unless, at the time of settlement, the individual receives a certification by the creditor that the payment is in full settlement of the debt or is part of a payment plan, the terms of which are included in the certification, that upon completion, will lead to full settlement of the debt;

(12) Make a representation that:

(A) The provider will furnish money to pay bills or prevent attachments;

(B) Payment of a certain amount will permit satisfaction of a certain amount or range of indebtedness;
or

(C) Participation in a plan will or may prevent litigation, garnishment, attachment, repossession, foreclosure, eviction, or loss of employment;

(13) Misrepresent that it is authorized or competent to furnish legal advice or perform legal services;

(14) Represent in its agreements, disclosures required by this part, advertisements, or Internet Web site that it is:

(A) A not-for-profit entity unless it is organized and properly operating as a not-for-profit entity under the law of the state in which it was formed; or

(B) A tax-exempt entity unless it has received certification of tax-exempt status from the Internal Revenue Service and is properly operating as a not-for-profit entity under the law of the state in which it was formed;

(15) Take a confession of judgment or power of attorney to confess judgment against an individual; or

(16) Employ an unfair, unconscionable, or deceptive act or practice, including the knowing omission of any material information.

(b) If a provider furnishes debt-management services to an individual, the provider may not, directly or indirectly:

(1) Purchase a debt or obligation of the individual;

(2) Receive from or on behalf of the individual:

(A) A promissory note or other negotiable instrument other than a check or a demand draft; or

(B) A post-dated check or demand draft;

(3) Lend money or provide credit to the individual, except as a deferral of a settlement fee at no additional expense to the individual;

(4) Obtain a mortgage or other security interest from any person in connection with the services provided to the individual;

(5) Except as permitted by federal law, disclose the identity or identifying information of the individual or the identity of the individual's creditors, except to:

(A) The administrator, upon proper demand;

(B) A creditor of the individual, to the extent necessary to secure the cooperation of the creditor in a plan; or

(C) The extent necessary to administer the plan;

(6) Except as otherwise provided in § 47-18-5423(f), provide the individual less than the full benefit of a compromise of a debt arranged by the provider;

(7) Charge the individual for or provide credit or other insurance, coupons for goods or services, membership in a club, access to computers or the Internet, or any other matter not directly related to debt-management services or educational services concerning personal finance except to the extent such services are expressly authorized by the administrator; or

(8) Furnish legal advice or perform legal services, unless the person furnishing that advice to or performing those services for the individual is licensed to practice law.

(c) This part does not authorize any person to engage in the practice of law.

(d) A provider may not receive a gift or bonus, premium, reward, or other compensation, directly or indirectly, for advising, arranging, or assisting an individual in connection with obtaining, an extension of credit or other service from a lender or service provider, except for educational or counseling services required in connection with a government-sponsored program.

(e) Unless a person supplies goods, services, or facilities generally and supplies them to the provider at a cost no greater than the cost the person generally charges to others, a provider may not purchase goods, services, or facilities from the person if an employee or a person that the provider should reasonably know is an affiliate of the provider:

(1) Owns more than ten percent (10%) of the person; or

(2) Is an employee or affiliate of the person.

47-18-5429. No later than thirty (30) days after a provider has been served with notice of a civil action for violation of this part by or on behalf of an individual who resides in this state at either the time of an agreement or the time the notice is served, the provider shall notify the administrator in a record that it has been sued.

47-18-5430.

(a) If the agreements of a provider contemplate that creditors will reduce finance charges or fees for late payment, default, or delinquency and the provider advertises debt-management services, it shall disclose, in an easily comprehensible manner, that using a debt-management plan may make it harder for the individual to obtain credit.

(b) If the agreements of a provider contemplate that creditors will settle for less than the full principal amount of debt and the provider

advertises debt-management services, it shall disclose, in an easily comprehensible manner, the information specified in § 47-18-5417(d)(3) and (4).

47-18-5431. If a provider delegates any of its duties or obligations under an agreement or this part to another person, including an independent contractor, the provider is liable for conduct of the person which, if done by the provider, would violate the agreement or this part.

47-18-5432.

(a) The administrator may act on its own initiative or in response to complaints and may receive complaints, take action to obtain voluntary compliance with this part, refer cases to the attorney general and reporter, or a district attorney general or other appropriate law enforcement official, and seek or provide remedies as provided in this act.

(b) The administrator may investigate and examine, in this state or elsewhere, by subpoena or otherwise, the activities, books, accounts, and records of a person that provides or offers to provide debt-management services, or a person to which a provider has delegated its obligations under an agreement or this act, to determine compliance with this part. Information that identifies individuals who have agreements with the provider shall not be disclosed to the public. In connection with the investigation, the administrator may:

(1) Charge the person the reasonable expenses necessarily incurred to conduct the examination;

(2) Require or permit a person to file a statement under oath as to all the facts and circumstances of a matter to be investigated; and

(3) Seek a court order authorizing seizure from a bank at which the person maintains a trust account required by § 47-18-5422, any or all money, books, records, accounts, and other property of the provider that is in the control of the bank and relates to individuals who reside in this state.

(c) The administrator may promulgate rules to administer the provisions of this part. Such rules shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5.

(d) The administrator may enter into cooperative arrangements with any other federal or state agency having authority over providers and may exchange with any of those agencies information about a provider, including information obtained during an examination of the provider.

(e) The administrator, by rule, shall establish reasonable fees to be paid by providers for the expense of administering this part.

(f) The administrator, by rule, shall adopt dollar amounts instead of those specified in §§ 47-18-5402, 47-18-5405, 47-18-5409, 47-18-5413, 47-18-5423, 47-18-5433 and 47-18-5435 to reflect inflation, as measured by the United States Bureau of Labor Statistics consumer price index for all urban consumers or, if that index is not available, another index adopted by rule by the administrator. The administrator shall adopt a base year and adjust the dollar amounts, effective on July 1 of each year, if the change in the index from the base year, as of December 31 of the preceding year, is at least ten percent (10%). The dollar amount must be rounded to the nearest one hundred dollars (\$100), except that the amounts in § 47-18-5423 must be rounded to the nearest dollar.

(g) The administrator shall notify registered providers of any change in dollar amounts made pursuant to subsection (f) and make that information available to the public.

(h) The administrator shall prescribe fees and penalties under this chapter such that all fees collectively shall sustain the requirements of this part pursuant to the requirements of § 4-29-121.

47-18-5433.

(a) The administrator may enforce this part and rules adopted under this act by taking one or more of the following actions:

(1) Ordering a provider or a director, employee, or other agent of a provider to cease and desist from any violations;

(2) Ordering a provider or a person that has caused a violation to correct the violation, including making restitution of money or property to a person aggrieved by a violation;

(3) Subject to adjustment of the dollar amount pursuant to § 47-18-5432(f), imposing on a provider or a person that has caused a violation a civil penalty not exceeding ten thousand dollars (\$10,000) for each violation;

(4) Prosecuting a civil action to:

(A) Enforce an order;

(B) Obtain restitution or an injunction or other equitable relief, or both; or

(5) Intervening in an action brought under § 47-18-5435.

(b) Subject to adjustment of the dollar amount pursuant to § 47-18-5432(f), if a person violates or knowingly authorizes, directs, or aids in the violation of a final order issued under subdivision (a)(1) or (a)(2), the administrator may impose a civil penalty not exceeding twenty thousand dollars (\$20,000) for each violation.

(c) The administrator may maintain an action to enforce this act in any county.

(d) The administrator may recover the reasonable costs of enforcing this part under subsections (a) - (c), including attorney's fees based on the hours reasonably expended and the hourly rates for attorneys of comparable experience in the community.

(e) In determining the amount of a civil penalty to impose under subsection (a) or (b), the administrator shall consider the seriousness of the violation, the good faith of the violator, any previous violations by the violator, the deleterious effect of the violation on the public, and any other factor the administrator considers relevant to the determination of the civil penalty.

47-18-5434.

(a) In this section, "insolvent" means:

(1) Having generally ceased to pay debts in the ordinary course of business other than as a result of good-faith dispute;

(2) Being unable to pay debts as they become due; or

(3) Being insolvent within the meaning of the federal bankruptcy law, 11 U.S.C. § 101 et seq., as amended.

(b) The administrator may suspend, revoke, or deny renewal of a provider's registration if:

(1) A fact or condition exists that, if it had existed when the registrant applied for registration as a provider, would have been a reason for denying registration;

(2) The provider has committed a material violation of this part or a rule or order of the administrator under this part;

(3) The provider is insolvent;

(4) The provider or an employee or affiliate of the provider has refused to permit the administrator to make an examination authorized by this part, failed to comply with § 47-18-5432(b)(2) within fifteen (15) days after request, or made a material misrepresentation or omission in complying with § 47-18-5432(b)(2); or

(5) The provider has not responded within a reasonable time and in an appropriate manner to communications from the administrator.

(c) If a provider does not comply with § 47-18-5422(f) or if the administrator otherwise finds that the public health or safety or general welfare requires emergency action, the administrator may order a summary suspension of the provider's registration, effective on the date specified in the order.

(d) If the administrator suspends, revokes, or denies renewal of the registration of a provider, the administrator may seek a court order authorizing seizure of any or all of the money in a trust account required by § 47-18-5422, books, records, accounts, and other property of the provider which are located in this state.

(e) If the administrator suspends or revokes a provider's registration, the provider may appeal and request a hearing pursuant to Title 4, Chapter 5, Part 3.

47-18-5435.

(a) If an individual voids an agreement pursuant to § 47-18-5425(b), the individual may recover in a civil action all money paid or deposited by or on behalf of the individual pursuant to the agreement, except amounts paid to creditors, in addition to the recovery under subdivisions (c)(3) and (4).

(b) If an individual voids an agreement pursuant to § 47-18-5425(a), the individual may recover in a civil action three (3) times the total amount of the fees, charges, money, and payments made by the individual to the provider, in addition to the recovery under subdivision (c)(4).

(c) Subject to subsection (d), an individual with respect to whom a provider violates this part may recover in a civil action from the provider and any person that caused the violation:

(1) Compensatory damages for injury, including noneconomic injury, caused by the violation;

(2) Except as otherwise provided in subsection (d) and subject to adjustment of the dollar amount pursuant to § 47-18-5432(f), with respect to a violation of § 47-18-5417, § 47-18-5419, § 47-18-5420, § 47-18-5421, § 47-18-5422, § 47-18-5423, § 47-18-5424, § 47-18-5427, or § 47-18-5428(a), (b), or (d), the greater of the amount recoverable under subdivision (1) or five thousand dollars (\$5,000);

(3) Punitive damages; and

(4) Reasonable attorney's fees and costs.

(d) In a class action, except for a violation of § 47-18-5428(a)(5), the minimum damages provided in subdivision (c)(2) do not apply.

(e) In addition to the remedy available under subsection (c), if a provider violates an individual's rights under § 47-18-5420, the individual may recover in a civil action all money paid or deposited by or on behalf of the individual pursuant to the agreement, except for amounts paid to creditors.

(f) A provider is not liable under this section for a violation of this part if the provider proves that the violation was not intentional and resulted from a good-faith error notwithstanding the maintenance of procedures reasonably adapted to avoid the error. An error of legal judgment with respect to a provider's obligations under this part is not a good-faith error. If, in connection with a violation, the provider has received more money than authorized by an agreement or this part, the defense provided by this subsection (f) is not available unless the provider refunds the excess within two (2) business days of learning of the violation.

(g) The administrator shall assist an individual in enforcing a judgment against the surety bond or other security provided under § 47-18-5413 or § 47-18-5414.

47-18-5436. If an act or practice of a provider violates both this act and Title 47, Chapter 18, Part 1, of this title, an individual may not recover under both for the same act or practice.

47-18-5437.

(a) An action or proceeding brought pursuant to § 47-18-5433(a), (b), or (c) must be commenced within four (4) years after the conduct that is the basis of the administrator's complaint.

(b) An action brought pursuant to § 47-18-5435 must be commenced within two (2) years after the latest of:

(1) The individual's last transmission of money to a provider;

(2) The individual's last transmission of money to a creditor at the direction of the provider;

(3) The provider's last disbursement to a creditor of the individual;

(4) The provider's last accounting to the individual pursuant to § 47-18-5427(a);

(5) The date on which the individual discovered or reasonably should have discovered the facts giving rise to the individual's claim; or

(6) Termination of actions or proceedings by the administrator with respect to a violation of the part.

(c) The period prescribed in subdivision (b)(5) is tolled during any period during which the provider or, if different, the defendant has materially and willfully misrepresented information required by this part to be disclosed to the individual, if the information so misrepresented is material to the establishment of the liability of the defendant under this part.

47-18-5438. In applying and construing this part, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

47-18-5439. This part modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et seq., but does not modify, limit, or supersede § 101(c) of that act, 15 U.S.C. § 7001(c), or authorize electronic delivery of any of the notices described in § 103(b) of that act, 15 U.S.C. 7003(b).

47-18-5440. Transactions entered into before this part takes effect and the rights, duties, and interests resulting from them may be completed, terminated, or enforced as required or permitted by a law amended, repealed, or modified by this part as though the amendment, repeal, or modification had not occurred.

47-18-5441. If any provision of this part or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this part that can be given effect without the invalid provision or application, and to this end the provisions of this part are severable.

SECTION 2. Tennessee Code Annotated, Section 47-18-104(b)(39), is amended by deleting the subdivision in its entirety.

SECTION 3. This act shall take effect July 1, 2010, the public welfare requiring it.

PASSED: June 2, 2009



RON RAMSEY
SPEAKER OF THE SENATE



KENT WILLIAMS, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 23rd day of June 2009



PHIL BREDESEN, GOVERNOR